

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MALIBU MEDIA, LLC,)	
)	
Plaintiff/Counter Defendant)	No.18 cv 6447
)	
vs)	Judge Durkin
)	
WILLIAM MULLINS,)	Magistrate Judge Finnegan
)	
Defendant/Counter Plaintiff)	
)	

STATEMENT OF NON-INFRINGEMENT

Malibu Media, LLC, ("Malibu"), by its undersigned attorneys, makes this declaration of non-infringement by William Mullins, ("Mullins"). In support of its statement, Malibu states as follows:

1. On September 21, 2018 Malibu filed its complaint initiating this action.
2. On October 2, 2018, this Court entered an order granting Malibu's motion for early discovery to permit Malibu to serve a subpoena, (the "Subpoena"), on Comcast Cable Communications Management, LLC, ("Comcast") to obtain the identity of the subscriber assigned IP address 73.176.168.82. DKE 9.
3. Malibu delivered the Subpoena to Comcast. The Subpoena provided the name and address of Malibu's attorney.
4. Malibu has been informed, and therefore believes that Comcast sent a copy of the Subpoena to Mullins.
5. Mullins did not contact Malibu or its attorney following receipt of the Subpoena from Comcast.
6. All downloading at the IP address ceased upon notice of the subpoena

being given by Comcast to Mullins.

5. On November 15, 2018 Comcast delivered its response to the Subpoena which identified Mullins as the subscriber assigned IP address 73.176.168.82.

6. Upon receipt of the response from Comcast, Malibu initiated an investigation to determine whether it had sufficient information to form a good faith belief that the subscriber was also the person responsible for the copyright infringement alleged in the complaint.

7. The following information was considered by Malibu in its investigation:

a. Mullins is a 44 year old male with a BS degree in computer engineering. In Malibu's experience, the majority of infringers are males with an IT background.

b. Mullins lives with his wife and one young child. There are no other adult males in the household.

c. In addition to the 11 Malibu works set forth in the complaint there were more than 70 other works, ("Additional Infringed Works") which were downloaded to Mullins' IP address.

d. The type and nature of the Additional Infringed Works are consistent with the assumption that a single individual within Mullins' demographics committed the infringement.

e. The frequency and extent of the infringement does not indicate a mere visitor or passerby to having done the infringement.

f. All infringement activity ceased a short time after delivery of the Subpoena to Comcast.

8. Based on the information available to it, Malibu believed it had a good faith basis for amending its complaint to name Mullins as the defendant.

9. Malibu filed its amended complaint on January 25, 2019.

10. Malibu learned for the first time in June, 2019, through an exchange of informal discovery that:

a. Before receiving the Subpoena from Comcast Mullins freely shared his internet password with both neighbors and guests.

b. Mullins' Wi-Fi system had a 300 foot radius range, within range of numerous other condominiums.

c. Mullins did not change his simple password for over ten years.

d. Upon receipt of the Subpoena, Mullins immediately disabled the built in Wi-Fi that was included with his cable modem, physically disconnected another Wi-Fi router, shut off the 5G access and the guest account and changed the WEP key to the router.

11. Based on the denials of infringement and the information provided by Mullins, Malibu now believes that the infringement was done by someone other than Mullins.

WHEREFORE, based on the information set forth above, Malibu Media, LLC, rescinds its previous assertion that William Mullins committed any infringement of its works as set forth in the amended complaint.

Respectfully submitted:

/s Mary K. Schulz
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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

Signature: ___/s/ Mary K. Schulz

Date: November 12, 2019

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